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**OFFICE OF PETITIONS**

In re Application of  
Silverbrook et al.  
Application No. 10/815,636  
Filed: April 2, 2004  
Attorney Docket No. HYJ001US

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:  
: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(3)  
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 13, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional Application No. 10/778,056, filed on February 17, 2004.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

37 CFR 1.78(a)(2)(iii) states the reference required by this paragraph must be included in an application data sheet (ADS) (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title. Petitioner failed to include either an amendment to the specification or ADS reflecting the change in the claim for late priority.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and an amendment<sup>1</sup> or an ADS stating the relationship of the prior-filed application to the instant application is required.

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<sup>1</sup> Note 37 CFR 1.121

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed Paralegal Liana Chase at (571) 272-3282.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy